

301 KAR 2:176

Deer control tags, deer destruction permits, and landowner designees

This administrative regulation establishes the requirements for the issuance of deer control tags and deer destruction permits, and establishes the requirements for the landowner designee appointment process for the removal of wildlife causing damage.

Significant Changes

The amendment defines a landowner designee and establishes the process for the appointment of landowner designees, and the timeframe for the department to approve or deny landowner designees. It also contains modifications to comply with administrative regulation drafting requirements.

FILED WITH LRC TIME: <u>10am</u>
JAN 14 2015
Donna Little REGULATIONS COMPILER

1 TOURISM, ARTS AND HERITAGE CABINET

2 Kentucky Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 2:176. Deer control tags, deer ~~[and]~~ destruction permits, and landowner designees.

5 RELATES TO: KRS 150.010, ~~[150.170,]~~ 150.175, 150.360, 150.390, 150.990

6 STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.170(7)

7 NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 150.105 allows the commissioner to~~
8 ~~authorize the destruction of wildlife causing damage.]~~ KRS 150.025(1) authorizes the
9 department to promulgate administrative regulations to establish open seasons for the taking of
10 wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a
11 limited area. KRS 150.105 authorizes the commissioner with the approval of the commission to
12 destroy or bring under control wildlife causing damage. KRS 150.170(7) authorizes landowners,
13 their spouses or dependent children, or a designee to destroy wildlife causing damage. It also
14 authorizes the department to promulgate administrative regulations that establish procedures for
15 the designee appointment process. This administrative regulation establishes the requirements for
16 the issuance of ~~[procedures under which]~~ deer control tags ~~[may be taken to alleviate localized~~
17 ~~agricultural]~~ and deer destruction permits, and establishes the requirements for the landowner
18 designee appointment process ~~[wildlife habitat damage until it is appropriate to apply deer herd~~
19 ~~stabilization or reduction measures on a county wide basis through regular hunting seasons]. [It~~
20 ~~also establishes the requirements and procedures for taking deer outside the statewide seasons.~~

~~EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.]~~

Section 1. Definitions. (1) "Damage to wildlife habitat" means:

(a) The existence of a browse line caused by deer; or

(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tag" means a tag issued by the department that ~~[which]~~ authorizes a hunter to take antlerless deer during an open deer season pursuant to 301 KAR 2:172.

(3) "Deer destruction permit" means written authorization from the department to take deer outside the hunting season framework established ~~[set forth]~~ in 301 KAR 2:172.

(4) "Deer food plot" means a crop or cultivated plants grown to attract and feed deer.

(5) "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.

(6) "Designee" means a person who has been designated by a landowner to remove wildlife causing damage on the landowner's property.

(7) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags if:

- 1 (a) Deer hunting occurred on the property during the previous deer season;
- 2 (b) Deer seasons and bag limits as established ~~[set forth]~~ in 301 KAR 2:172 are determined by a
- 3 department representative to be inadequate to control deer populations on the property; and
- 4 (c) The landowner agrees to:
- 5 1. Follow the deer management practices recommended by the department; and
- 6 2. Supply the department with weight, age and condition data of deer taken from the property.
- 7 (3) A department representative shall make an on-site inspection of each property for which a
- 8 request for deer control tags has been made, unless the property:
- 9 (a) Has been previously inspected by the department and the landowner affirms that deer damage
- 10 still exists; or
- 11 (b) Is immediately adjacent to property assessed by a department representative as having severe
- 12 deer damage.
- 13 (4) A landowner whose property is immediately adjacent to property assessed by a department
- 14 representative as having severe deer damage shall be issued deer ~~[damage]~~ control tags upon
- 15 request of the landowner.
- 16 (5) The department shall not issue deer control tags to a landowner whose only damage is to a
- 17 deer food plot.
- 18 Section 3. Applying for Deer Control Tags. (1) A landowner shall request ~~[wishing to apply for]~~
- 19 deer control tags by contacting ~~[shall contact]~~ the department through:
- 20 (a) A conservation officer; or
- 21 (b) The private lands biologist for the county in which the property is located.
- 22 (2) If required by Section 2 of this administrative regulation, a department representative shall
- 23 visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment shall be made on or before September 30 to be eligible for current year deer control tags.

(4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each property [~~landholding~~] based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner:

(a) May transfer a deer control tag to another person;

(b) Shall not issue more than five (5) deer control tags to an individual; and

(c) Shall require hunters to sign a deer control tag at the time of transfer.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the property [~~landholding~~] for which it was issued.

(2) A deer control tag shall expire after the license year for which it was issued.

(3) A person who uses [~~using~~] a deer control tag:

(a) Shall have in possession:

1. A valid deer control tag; and

2. A valid hunting license and current deer permit, unless exempt from license or permit requirements pursuant to KRS 150.170;

(b) May use deer control tags during archery, crossbow, modern ~~[and]~~ gun, or muzzle-loader seasons to take antlerless deer;

(c) Shall not take more than five (5) deer per license year with deer control tags; and

(d) Shall abide by the provisions of 301 KAR 2:172, except that:

1. Antlered deer shall not be taken; and

2. The deer control tag shall remain attached to the carcass until final processing or disposal.

(4) Deer taken with a deer control tag shall not count toward the annual limit as established ~~[specified]~~ in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:

(a) To a person authorized by the commissioner to remove deer that are or may become a public safety or environmental threat or that have entered a permitted captive cervid facility;

(b) To a landowner or their designee:

1. Who continues to experience damage after being issued deer control tags; or

2. Whose property cannot be hunted legally and deer are posing a public safety or environmental threat;

(c) To a captive cervid facility permit holder or applicant:

1. Whose fence meets the fencing and holding requirements in 301 KAR 2:083; and

2. Who has attempted to remove wild deer using nonlethal methods or statewide deer seasons as established ~~[set forth]~~ in 301 KAR 2:172.

(2) A deer destruction permit shall specify:

(a) The number and sex of deer to be destroyed;

- 1 (b) The method of destruction;
- 2 (c) The name of the person who will destroy the deer; and
- 3 (d) The dates during which the destruction will take place.
- 4 (3) A deer destruction permit shall not be issued without the recommendation of a department
- 5 representative ~~[of the department]~~ and the approval of the commissioner.
- 6 (4) A person who uses a ~~[destroying]~~ deer destruction permit shall:
- 7 (a) Attach a disposal permit provided by the department to each carcass;
- 8 (b) Not remove the disposal permit until the carcass is processed or disposed of; and
- 9 (c) If an antlered deer was taken, relinquish ~~[turn]~~ the antlers ~~[in]~~ to the department.
- 10 (5) A deer destruction permit shall not be used except as specified on the permit.
- 11 Section 8. Designee Procedures and Requirements. (1) A landowner may appoint a designee to
- 12 kill wildlife causing damage on the landowner's land.
- 13 (2) The landowner and designee shall complete and submit to the department a Wildlife Damage
- 14 Assistance Form provided by the department.
- 15 (3) The department shall have thirty (30) days upon receipt of the Wildlife Damage Assistance
- 16 Form to approve or deny a designee.
- 17 ~~[(6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking~~
- 18 ~~action to control deer that are posing a direct and immediate threat to life or property.]~~
- 19 Section 9. ~~[8-]~~ Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal
- 20 Procedures. (1) The department shall ~~[may]~~ revoke a deer control tag or destruction permit or
- 21 ~~[and]~~ deny a future tag or permit to a person who~~[-~~
- 22 ~~(a)]~~ Fails to comply with the requirements of this administrative regulation~~[-~~
- 23 ~~(b) Is convicted of a violation of 301 KAR 2:083, 2:132, 2:172, or 2:178].~~

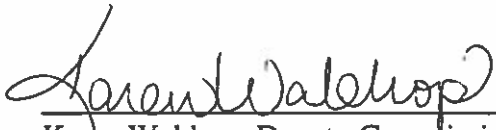
(2) An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

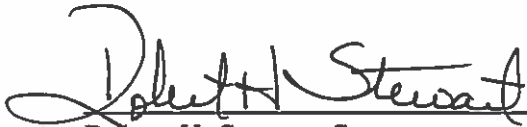
(a) "Wildlife Damage Designee Form", 2015 edition.

(2) This material may be inspected, copied, or obtained, subject applicable copyright law, at the Department of Fish and Wildlife Resources, # 1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

Approved by the Fish and Wildlife Commission



Karen Waldrop, Deputy Commissioner, for
Gregory K. Johnson, Commissioner
Department of Fish and Wildlife Resources



Robert H. Stewart, Secretary
Tourism, Arts and Heritage Cabinet



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2015, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business March 2, 2015.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Rose Mack
Department of Fish and Wildlife Resources
Arnold L. Mitchell Building
#1 Sportsman's Lane
Frankfort, KY 40601
(502) 564-7109, ext. 4507
FAX (502) 564-9136
Email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

301 KAR 2:176. Deer control tags, deer destruction permits, and landowner designees.

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the issuance of deer control tags and deer destruction permits, and establishes the requirements for the landowner designee appointment process for the removal of wildlife causing damage..

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow for increased harvest during the season in localized areas, for out-of-season removal of deer where necessary, and to establish the process for appointing landowner designees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.105 authorizes the commissioner with the approval of the commission to destroy or bring under control wildlife causing damage. KRS 150.170(7) authorizes landowners, their spouses or dependent children, or an appointed designee to destroy wildlife causing damage. It also authorizes the department to promulgate administrative regulations that establish procedures for the landowner designee process.

(d) How will this administrative regulation assist in the effective administration of the statutes: This regulation assists in the administration of the statutes by establishing requirements for assisting landowners by controlling deer populations on certain tracts of land both within and outside the regular hunting seasons and defines the process for a landowner to appoint a designee to destroy or bring under control wildlife causing damage.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment defines a landowner designee and establishes the process for the appointment of landowner designees, and the timeframe for the department to approve or deny landowner designees. It also contains modifications to comply with administrative regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define the designee appointment process and the creation of a timeline for the approval or denial of a designee by the department.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected: Anyone experiencing agricultural damage due to deer or other wildlife will potentially be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Landowners wishing to designate someone to control wildlife causing damage must complete and submit the Wildlife Damage Assistance Form and obtain approval from the department within thirty (30) days.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a cost associated with the designee process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Landowners will be able to officially designate someone to assist in the control of wildlife causing damage instead of handling it themselves.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation amendment will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any fees or funding to implement this administrative regulation as amended.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not used because all landowners must follow the same requirements when attempting to control deer or other wildlife on their property.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 301 KAR 2:176

Contact Person: Rose Mack

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) , 150.105 and 150.170(7).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Summary of Material Incorporated by Reference

- (1) The “Wildlife Damage Designee Form”, 2015 edition, is a one page, legal size, single-sided form that a landowner must complete and submit to the Kentucky Department of Fish and Wildlife Resources if they wish to appoint a designee to kill wildlife causing damage on the landowner’s property.